

**UNITED STATES DISTRICT COURT**

## DISTRICT OF NEVADA

## ORDER

SFR INVESTMENTS POOL 1, LLC;  
ALIANTE MASTER ASSOCIATION; and  
DOES 1 THROUGH 10, INCLUSIVE,

### Defendants.

Lenders and investors have been at odds over the legal effect of a homeowners' association's ("HOA") nonjudicial foreclosure of a superpriority lien on a lender's first trust deed pursuant to Nevada Revised Statutes § 116.3116. *See Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC*, 106 F. Supp. 3d 1174, 1180 (D. Nev. 2015). The Nevada Supreme Court seemed to have settled the debate in *SFR Invs. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014), holding that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *SFR*, 334 P.3d at 419.

However, on August 12, 2016, two members of a Ninth Circuit panel held in *Bourne Valley Court Trust v. Wells Fargo Bank* that Chapter 116's nonjudicial foreclosure scheme "facially violated mortgage lenders' constitutional due process rights" before it was amended in 2015. *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 2016 WL 4254983, at \*5 (9th Cir. Aug. 12, 2016). As a result, *Bourne Valley* is likely dispositive of this and the hundreds of other foreclosure cases pending in both state and federal court. To save the parties from the need to

1 invest resources briefing the effect of the *Bourne Valley* opinion before the finality of that  
2 opinion has been determined, the Court **STAYS** all proceedings in this case pending exhaustion  
3 of all appeals of *Bourne Valley*.

4 **I. LEGAL STANDARD**

5 “[T]he power to stay proceedings is incidental to the power inherent in every court to  
6 control the disposition of the causes of action on its docket with economy of time and effort for  
7 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “A trial  
8 court may, with propriety, find it is efficient for its own docket and the fairest course for the  
9 parties to enter a stay of an action before it, pending resolution of independent proceedings  
10 which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir.  
11 1979). In deciding whether to grant a stay, a court may weigh the following: (1) the possible  
12 damage which may result from the granting of a stay; (2) the hardship or inequity which a party  
13 may suffer in being required to go forward; (3) the orderly course of justice measured in terms  
14 of the simplifying or complicating of issues, proof, and questions of law which could be  
15 expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).  
16 However, “[o]nly in rare circumstances will a litigant in one case be compelled to stand aside  
17 while a litigant in another settles the rule of law that will define the rights of both.” *Landis*, 299  
18 U.S. at 255. A district court’s decision to grant or deny a *Landis* stay is a matter of discretion.  
19 See *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.  
20 2007).

21 **II. DISCUSSION**

22 At the center of this case are the HOA-foreclosure sale conducted pursuant to Nevada  
23 Revised Statutes § 116.3116 and the competing arguments that the foreclosure sale either  
24 extinguished the bank’s security interest under the *SFR* holding or had no legal effect because  
25 the statutory scheme violates due process. Because the Ninth Circuit in *Bourne Valley* held that

1 the scheme was facially unconstitutional, *see Bourne Valley*, 2016 WL 4254983, at \*5, the  
2 *Bourne Valley* opinion and any modification of that opinion have the potential to be dispositive  
3 of this case. Under this circumstance, the *Landis* factors weigh strongly in favor of staying this  
4 action pending final resolution of the *Bourne Valley* decision. Indeed, the possible prejudice to  
5 the parties is minimal as the only potential harm is that the parties may wait longer for  
6 resolution of this case if it is stayed. However, if this case is not stayed, a delay would also  
7 result from any motions for reconsideration that may be necessitated if the current decision in  
8 the *Bourne Valley* case does not stand. Accordingly, a stay is not likely to appreciably lengthen  
9 the life of this case. Further, in the absence of a stay, judicial resources may be unnecessarily  
10 expended to resolve issues which may ultimately be decided by higher courts to which this  
11 Court is bound to adhere. Because the *Bourne Valley* decision is squarely on point, the orderly  
12 course of justice likewise weighs in favor of a stay. Accordingly, the Court finds that staying  
13 this action pending final resolution of *Bourne Valley* would be efficient for the Court's own  
14 docket and the fairest course for the parties. *See Leyva*, 593 F.2d at 863.

15 **III. CONCLUSION**

16 **IT IS THEREFORE ORDERED** that this case is administratively **STAYED** pending  
17 exhaustion of all appeals of *Bourne Valley Court Trust v. Wells Fargo Bank*, No. 15-15233 (9th  
18 Cir. Aug. 12, 2016). Once exhaustion occurs, any party may move to lift the stay. Until that  
19 time, all proceedings in this action are stayed.

20 **IT IS FURTHER ORDERED** that all pending motions are **DENIED** without prejudice  
21 with leave to refile within twenty-one days after the stay is lifted.

22 **IT IS FURTHER ORDERED** that SFR Investments Pool 1, LLC, shall care for,  
23 preserve, and maintain the Property.

24 **IT IS FURTHER ORDERED** that, beginning on November 12, 2017, the parties must  
25 file a joint status report updating the Court on the status of this case every one-hundred and

1 eighty days. Along with the joint status report, SFR Investments Pool 1, LLC, shall submit a  
2 statement affirming that all expenses necessary to maintain the property, including but not  
3 limited to, timely and full payment of all homeowners association assessments, property taxes,  
4 and property insurance premiums due and owing or past due at any time during the effective  
5 period of this Stay are current and up to date.

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7 **DATED** this 12 day of May, 2017.

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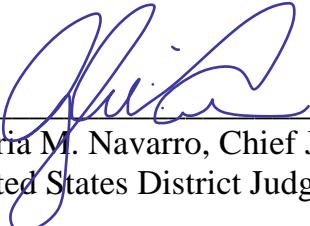
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Gloria M. Navarro, Chief Judge  
United States District Judge